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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/006,779	11/05/2001	William J. Cooper	81607A	9847
7590 06/08/2005				
KRIEGSMAN & KRIEGSMAN 665 Franklin Street Framingham, MA 01702			EXAMINER FOSTER, JIMMY G	
			ART UNIT 3728	PAPER NUMBER

DATE MAILED: 06/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Application No.

10/006.779

Applicant(s)

COOPER ET AL.

Examiner

Jimmy G Foster

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 March 2005.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10-21 and 23-28 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 10-17, 19-21, 23 and 25-28 is/are allowed.
- 6) ☒ Claim(s) 18 and 24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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1) Claims 10-17, 19-21, 23 and 25-28 are allowed. The term "off center stub" is considered to mean that the stub is connected in an off center manner with respect to the fastener, that is off set from the center axis of the fastener.

2) The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3) Claims 18 and 24 are finally rejected under 35 U.S.C. § 103(a) as being unpatentable over Lankton (3,733,657) as applied to claim 18, 23, or 26 above, and further in view of Kato (4,467,656). In the reference of Lankton, there is provided a fastener clip shown in Figure 9, including individual fasteners attached together by a rod/elongated runner 8 combined with respective connecting stubs 10. Each fastener includes a thin elongated filament 6 and cross bars 2,4' on opposite ends of the filament.

The second cross bars (4') are shown in Figure 9 as including protrusions/posts which are connected to each other (for adjacent fasteners) at necks 28, thereby connecting together adjacent fasteners. In an alternative way of interpreting the structure, each protrusion together with half a neck constitutes a post, which is connected to the adjacent post (the opposed protrusion and neck half).

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The first cross bar (2), located closest to the runner, inherently has a length - the result effective variable/general condition - as shown in Figure 9. Additionally, the clip of fasteners inherently include a spacing pitch between the individual fasteners. Finally, the filament inherently includes a filament length. Although the reference does not disclose the particular length of cross bar, spacing pitch between the fasteners, or the length of filament as claimed by Applicant, the cross bar, the fastener spacing, and the filament length of Lankton would appear to function in the same manner as those claimed by particular value, and Applicant has not shown objective evidence that this is not the case. It has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). Moreover, it has also been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233. Furthermore, the particular capacity-related size of an element already taught in the art generally will not support patentability. See In re Rose, 105 USPQ 237, 240 (CCPA 1955). For these reasons it would have been obvious to have made the cross bar of Lankton with any desired length which will work, to have made the spacing of fasteners of Lankton with any desired pitch that will work, and to have made the filament of Lankton with any desired length that will including the length that has been claimed by Applicant.

The connecting structures 26,28 (protrusions and necks) of Lankton (described above) promote separation of the fasteners from each other as desired (see col. 6, lines 18-51). Although Lankton does not disclose attaching the first cross bars to each other by posts 26,28 in the same manner as for the second fasteners, the reference of Kato at 1b and 7

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suggests that plural fasteners 1-3 connected to a runner/rod may each be connected to adjacent fasteners of a clip/cluster by connecting together both the first cross bars (2) and the second cross bars/heads (1). This connection at both the cross bars apparently permits long clips/clusters of fasteners to be provided without causing excessive entanglement.

Accordingly, it would have been obvious in view of Kato to have attached both the first and second cross bars of Figure 9 of Lankton. It would have been obvious in view of the teaching of Lankton to have used the protrusion and neck structure 26,28 for the reasons as disclosed by Lankton.

4) Applicant's arguments filed March 31, 2005 have been fully considered but they are not deemed to be persuasive. Applicant has argued that Kato teaches away from post connections. However, the reference of Kato is a secondary reference in the rejection, used to show that it is conventional to attach the rail-proximal crossbars to each other. It is acknowledged that Kato teaches away from post connections. However, Lankton, which is the primary reference, "teaches toward" post connections. Therefore, it would have been obvious to have provided the connections of the rail-proximal crossbars with or without post-type connections whether the concern is ready frangibility as taught by Lankton, or the prevention of whisker-like elements as taught by Kato.

5) **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST

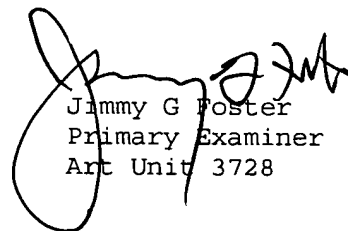
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RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

6) Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jimmy G Foster whose telephone number is (571) 272-4554. The examiner can normally be reached on Mon-Fri, 8:45 am - 5:15 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.


Jimmy G Foster
Primary Examiner
Art Unit 3728

JGF
7 June 2005